REMARKS

Summary of the Examiner's Actions

The examiner rejected Claims 1, 5, 7, 9, 14, 18, 20, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Lee, U.S. Patent Application Number 10/643,565 ("Lee") in view of Tomes, U.S. Patent Number 4,349,809 ("Tomes"). Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

The examiner rejected Claims 2, 10, 11, 15, 21, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Lee and Tomes in view of Sloan et al., U.S. Patent Number 3,336,530 ("Sloan"). Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

The examiner rejected Claims 3 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Lee, Tomes, and Sloan, in view of Vogt, U.S. Patent Number 4,853,685 ("Vogt"). Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

The examiner rejected Claims 6 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Lee and Tomes in view of Murai, U.S. Patent Number 4,234,876 ("Murai"). Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

The examiner rejected Claims 8 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Lee and Tomes in view of Grassano, U.S. Patent Number 4,681,303 ("Grassano"). Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

The examiner rejected Claims 15, 21, and 22 under 35 U.S.C. § 103(a) as being unpatentable over and Lee (US 10/643,565) and Tomes, U.S. Patent Number 4,349,809 ("809"), further in view of Sloan et al., U.S. Patent Number 3,336,530 ("530"). Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

Rejections under 35 U.S.C. § 103(a)

The examiner rejected Claims 1-3, 5-11, and 14-24 under 35 U.S.C. § 103(a). In order to support a rejection under 35 U.S.C. § 103(a), "the examiner bears the initial

burden of factually supporting any *prima facie* conclusion of obviousness." MPEP § 2142, pg. 2100-121, 8th ed. "To reach a proper determination under 35 U.S.C. § 103(a), the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made." *Id.* The first element in establishing a *prima facie* case of obviousness is that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings." MPEP § 2143, pg. 2100-122, 8th ed. The second element is that there "must be a reasonable expectation of success." *Id.* The third element is that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." *Id.*

The relevant facts for finding obviousness relate to (1) the scope and content of the prior art, (2) the level of ordinary skill in the field of the invention, (3) the differences between the claimed invention and the prior art, and (4) any objective evidence of nonobviousness such as long felt need, commercial success, the failure of others, or copying. *Graham v. John Deere Co.*, 148 U.S.P.Q. 459, 467 (1966; *see Continental Can Co. v. Monsanto Co.*, 20 U.S.P.Q.2d 1746, 1750-51 (Fed. Cir. 1991). The Supreme Court in *Graham* stated that "the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved." *Graham*, 383 U.S. at 17, 148 U.S.P.Q. at 467. The *Graham* court further stated that "[s]uch secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy." *Id.*

Tomes is not analogous prior art and, therefore, is not a proper reference for supporting a rejection under 35 U.S.C. § 103(a). The United States Court of Appeals for the Federal Circuit has held that "[i]n order to rely on a reference as a basis for rejection

of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). The examiner considers the independent claims, Claims 1, 14, 23, and 24, obvious under the combination of the admitted prior art and Tomes. Certainly the admitted prior art is relevant to the obviousness inquiry. However, the examiner has mischaracterized Tomes as a vibration switch. Tomes discloses an inclinometer (tilt sensor), a device analogous to a level, designed to alert an operator when a vehicle exceeds a predetermined safe angle of inclination. *Abstract*, U.S. Patent Number 4,349,809 (Sep. 14, 1982). The instant application addresses the problem of determining whether an animal is in motion (vibrating) or is stationary (not vibrating). Applicant is not concerned with the angle of inclination of the animal.

A vehicular tilt sensor, such as that described in Tomes, would not be considered pertinent when attempting to solve the problem of inadequate motion detection. The United States Court of Appeals for the Federal Circuit has stated that "[a] reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. *In re Clay*, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). Tomes discloses a switch designed specifically for activating when a selected angle of inclination is reached. Further, Tomes discloses the use of six copper BB's rolling within a copper tube. *Description of the Preferred Embodiment*, U.S. Patent Number 4,349,809 at col. 4, lines 1-6. The copper tube contains a lubricant, such as lightweight oil. *Id.* at lines 6-10. "The purpose of having multiple spherical contact elements 36 and lubrication is to slow the reaction time of the device. This reduces the likelihood that jerking or jolting of the vehicle as it is driven over rough terrain will activate the buzzer 18 when in fact the vehicle has not exceeded its safe limit of inclination established in advance by the driver." Id. at lines 10-17. In other words, having multiple contact elements and lubrication is designed to

avoid detecting vibrations. Because Applicant would not have considered inclinometers in searching for a solution to the immediate problem, Tomes is not an appropriate reference to support an obviousness rejection. Applicant respectfully requests that the examiner withdraw the rejections under 35 U.S.C. § 103(a).

The rejection of the dependent claims, Claims 2, 3, 5-11, and 15-22 have foundation in Tomes, which Applicant believes to be a non-analogous reference. Further, each dependent claim depends, either directly or independently, from an independent claims believed by Applicant to be allowable. Applicant respectfully requests that the examiner withdraw the rejections under 35 U.S.C. § 103(a).

Resubmission of Drawings

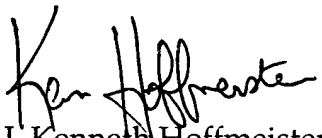
As requested by the examiner, Applicant is enclosing a full set of drawings including the corrected figure. A review of 37 C.F.R. § 1.121(d) indicates that only the corrected figure need be submitted as a replacement drawing. ("Any changes to *an* application drawing . . . must be submitted on *a* replacement sheet . . . .") Applicant requests clarification of this requirement.

Summary

In view of the arguments presented herein, it is believed that the above-identified patent application is in a condition for the issuance of a Notice of Allowance. Such action by the examiner is respectfully requested. If, however, the examiner is of the opinion that any of the drawings or other portions of the application are still not allowable, it will be appreciated if the examiner will telephone the undersigned to expedite the prosecution of the application.

Please charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 16-1910.

Respectfully submitted,



J. Kenneth Hoffmeister
Registration Number 43,675

PITTS AND BRITTIAN, P.C.
P.O. Box 51295
Knoxville, Tennessee 37950-1295
(865) 584-0105 Voice
(865) 584-0104 Fax